

The State of New Hampshire

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June 28, 1974

Mr. Roy Y. Lang
Director
Department of Personnel
State House Annex
Concord, New Hampshire 03301

Dear Mr. Lang:

This letter will respond to your request for our opinion dated June 19, 1974, in which you have asked "Who has the right to determine which classifications of employees shall be eligible for the additional payments authorized by Chapters 47 and 52 of the 1974 Special Session Laws".

1974 Laws 47:9, inserting RSA 99:10 (new) provides an additional \$25.00 per week for classified employees at the State Prison and the New Hampshire Hospital who are "continuously exposed to inmates or forensic patients daily in the normal course of their duties"; Section 11 of the same Session Law inserting RSA 99:11 (new) provides an additional \$5.00 per week for classified employees at the New Hampshire Hospital, Laconia State School and Training Center, and the New Hampshire Youth Development Center "who, on a daily basis, are actively engaged in the care and treatment of patients or inmates". 1974 Laws 52:1 inserts RSA 99:12 (new) which provides an additional \$15.00 per week for registered or licensed practical nurses at the New Hampshire Hospital, Laconia State School and Training Center, the New Hampshire Youth Development Center, the New Hampshire Home for the Elderly, and the New Hampshire Veterans Home. Both the \$5.00 increase for institutional employees and the \$15.00 increase for nurses are made inapplicable to employees who already receive the \$25.00

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hazardous duty pay under Chapter 47, Section 9 above mentioned. Thus, the final determination of the salary level of all employees in each of the general classifications described above requires a determination by someone as to which employees in those classifications meet one or more of the more narrow delineations which limit the application of the several pay increases.

In the ordinary course of personnel administration, the Director of Personnel and the Personnel Commission make all determinations in matters of classification and compensation of State employees. RSA 98:8 and 13. The statutory language providing for the pay increases in question is silent on the subject of who shall make the determinations required thereby. However, as you pointed out in your letter, there is in the Senate Journal for April 2, 1974, a statement by Senator Trowbridge, following the recommendation by Senator Green for adoption of the Committee on Conference Report on House Bill 11 which became Chapter 47, to the effect that "... it is the legislative intent that the person who decides who is eligible for those extra premium payments shall be the Warden or the appropriate administrator at the institution ...". While Senator Trowbridge's statement is not the equivalent of a statement by the Committee on Conference, nevertheless the statement was made on the floor of the Senate in the presence of other members of the Committee, and it drew no representations to the contrary.

In the face of the unequivocal statement of legislative intent, which is the only evidence of legislative intent available, it would require the existence of a clear statutory designation of some official other than the "Warden or the appropriate administrator" as the sole person to make all determinations as to classification and compensation in order to compel a result different from the one the Legislature apparently intended. In our opinion, such a precise designation by statute is not to be found.

The authority of the Personnel Commission and the Director of Personnel as expressed in RSA Chapter 98 is stated in terms of developing and implementing a classification and compensation plan. It is a fundamental characteristic of the salary provisions in question that they are not a part of the classification or compensation plan, but rather exist independently of it. These provisions apply to the employees described without reference to job classification or a compensation plan tied to job classification.

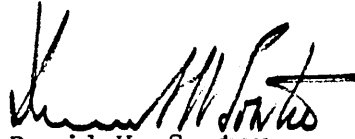
Mr. Lang

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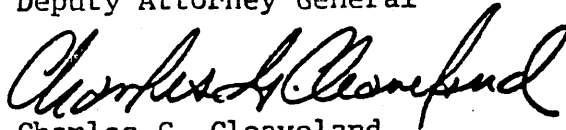
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In accordance with the above reasoning, it is our opinion that the respective institution heads are the proper officials to make the determinations required by the statutory pay increases in question.

Sincerely yours,



David H. Souter
Deputy Attorney General



Charles G. Cleaveland
Assistant Attorney General

CGC/tlr